SPEECH

OF

HON. ALEXANDER H. STEPHENS,

OF GEORGIA,

IN THE HOUSE OF REPRESENTATIVES, DECEMBER 15, 1858.

The House having resumed the consideration of the resolutions reported by the Committee on the Judiciary, in reference to the impeachment of Judge Watrous—

Mr. STEPHENS, of Georgia, said:

Mr. SPEAKER: In compliance with the promise I made yesterday, I propose to address myself to the House this morning for a very brief space of time. An analysis of all the facts set forth in the voluminous mass of evidence before us would require too much time. That is not my object. It would be useless to do so. But there are some matters connected with the subject I wish to be heard upon. This is the first case of impeachment which has ever come directly before me, since I have been a member of this House, for consideration and action. I shall, in what I say, attempt to lay down some general principles by which my own conduct shall be governed in this and all like cases. I feel it due to myself, due to the party, due to the country, and also due to the House.

It has been said in this debate that this is the first instance of impeachment, in this country, of a judicial officer, where there has been an imputation upon his integrity and honesty—where corruption has been charged. I believe that is true. It is a matter of congratulation to us, looking at our past history; and I think the same cannot be said of any other country upon earth with a history as long as ours. This of itself gives an interest to the question before us, which, in its very nature, is one of the gravest character. The power we are called upon to exercise is a great one. It is a wise power; it is a right power; it is a just power; and it ought to be justly exercised. We are acting, however, under limited powers; and I do not know that I should have addressed the House at all, had it not been for principles and doctrines advanced by some gentlemen, by which we should be governed, to which I do not assent.

What offenses are impeachable? Some gentlemen have argued that "misdemeanor" is a term in the Constitution used, in contradistinction to that conduct known as "good behavior," during which a judge can hold his office. To demean is to behave, and to misdemean is to misbehave; and any misbehaviour is a misdemeanor—that is their argument. I do not, sir, agree to that construction of the word "misdemeanor" in that clause of the Constitution under which we are acting. The Constitution authorizes us to impeach for "treason, bribery, and other high crimes or misdemeanors." What is to be understood by this term "misdemeanor?" Is it whatever a majority of this House, or a majority of the Senate at any one time may think is *misbehavior?* I think not. From the days of *magna charta* in England, and much more so in the United States under our Constitution, no man can be deprived of life, liberty, or property, "*aut aliquo modo distruatur;*" or *in any other* manner be injured *in his estate* or *reputation*, but by the judgment of his peers, and the *laws of the land.* The offense must not merely exist in the breasts of a majority—questions of propriety, questions of what may be deemed good behavior or not; but it must be some offense known to the law or Constitution; and I will lay down the broad principle that the offense, to be impeachable, must be within one or the other of the classes of acts, known to the law either as *mala prohibita*, or *mala in se.*

Now, sir, some have asked if no act is impeachable by this House except such as violate some statute of the United States? I am free to say that my individual opinion is that none others are; and before you try a man for violating a law, you must make the law, or declare it; and where there is no law, there is no sin. Either in the Divine or human codes, where there is no law there can be no transgression. No man ought to be arraigned and tried for anything, unless in the act complained of he has violated some law. But it is not necessary for me to urge these individual opinions upon this occasion. I do not intend to do it, because, in the precedents of our past Government, it has not been practically recognized, and for all essential purposes, so far as this case is concerned, it is not necessary to do so. This, however, is the commencement of a criminal prosecution, and it

must be prosecuted according to the known rule of law as recognized by the precedents, at least; and according to them it must be for a violation of some one or more of the great principles of the common law.

This, I state, is the practice of the Government, and I do not care to deviate from it in this case. It is settled by the highest authority; and I refer the House to what Judge Story has said upon the subject, in his treatise upon the Constitution of the United States. I believe it will be admitted that this eminent jurist, of whom our country may well be proud, of whose fame this generation may be proud, whose name extends wherever civilization extends and civil jurisprudence has a foothold, was highly federal enough. That he was in favor of giving the Government quite as much power as it ought to possess, I think will be conceded. Now, in considering the power of impeachment, and the offenses which are impeachable, he says:

"The next inquiry is, what are impeachable offenses? They are 'treason, bribery, or other high crimes and misdemeanors.' For the definition of treason, resort may be had to the Constitution itself; but for the definition of bribery, resort is naturally and necessarily had to the common law; for that, as the common basis of our jurisprudence, can alone furnish the proper exposition of the nature and limits of this offense.

"The only practical question is, what are to be deemed high crimes and misdemeanors? Now, neither the Constitution nor any statute of the United States has in any manner defined any crimes, except treason and bribery to be high crimes and misdemeanors, and as such impeachable. In what manner, then, are they to be ascertained?"

He goes on to say that they are to be ascertained by the common law; and I beg leave to read particular parts of what he does say:

"It is the boast of English jurisprudence—and without the power of impeachment would be an intolerable grievance—that in trials of impeachment the law differs not in essentials from criminal prosecutions before inferior courts."

Some gentlemen have argued this case as if it was not in the nature of a criminal prosecution. In my judgment it is a criminal prosecution of the very highest order; in England it is undoubtedly so, because the loss of the life of the party was often the result of the judgment. It is true, that in our Constitution we have limited it; with us, the result of a conviction is disqualification from holding office. It is, nevertheless, here as there, as Judge Story says, in the nature of a criminal prosecution. Now, mark you:

"The same rules of evidence, the same legal notions of crime and punishment prevail."

"The same legal notions of crime." Gentlemen said yesterday that any conduct which would disqualify a party from occupying a seat on the bench, is misbehavior. What, sir, is misbehavior? What different notions people have on the subject—it is often a matter of taste. "*De gustibus non est disputandum*," is an old maxim. There is nothing that there is more difference of opinion about, than what constitutes misbehavior, or good behavior. But to go on:

"Impeachments are not framed to *alter the law*, but to carry it into more effectual execution where it might be obstructed by the influence of too powerful delinquents, or not easily discerned in the ordinary course of jurisdiction, by reason of the peculiar quality of the alleged crimes."

Again:

"It seems, then, to be the settled doctrine of a high court of impeachment, that though the common law cannot be a foundation of a jurisdiction not given by the Constitution or laws, that jurisdiction, when given, attaches, and is to be exercised according to the rules of the common law; and that what are and what are not high crimes and misdemeanors, is to be ascertained by a recurrence to that great basis of American jurisprudence."

Judge Story did not go to the extent of the Federal doctrine, that there is an American common law under which indictments may be found; but he says that the *common law is our guide*, and that when the statute is silent on an offense in the high court of impeachment, rules to ascertain the nature and extent of crimes have to be determined by that great basis of American jurisprudence.

Now, sir, one more extract, and I will drop this authority, for it is uniform:

"It is not every offense which, by the Constitution, is so impeachable; it is not every offense even against *the common law* that is impeachable; it must not only be an offense, but a *high crime* and misdemeanor."

That is what Judge Story says. We are first to determine the offense according to the principles of common law, and then it must be a high crime and misdemeanor under that. To this extent he lays down the rule, and on this principle I shall consider this case. These are the general principles I intend to apply to the facts of this case.

All that he has said in this debate about the purity of the bench, and the importance of preserving the judicial robes unsullied and untarnished, I fully concur in. Every word that has been uttered on that point I indorse. I would have the ermine of your judges as unstained as my honorable friend near me, [Mr. VALLANDIGHAM,] who declaimed so eloquently on that theme the other day; and if there was a single fact in the case which led me to believe that the purity of the bench had been tainted in the person of Judge Watrous, I would not withhold my vote to send this case as charged—that he is guilty of having used a forged instrument knowing it to be forged—to the Senate.

What, then, are the accusations and what are the facts? I propose, Mr. Speaker, to present to this House succinctly the gist of this accusation. I will not undertake to detail all the *minutiæ* of the case, but merely the strong points—those on which the impeachment must or ought to stand or fall. I am not giving my views to the House for the purpose of influencing any gentleman's mind; I am only giving the views which govern my own action. I have drawn from the memorial of the parties the gist of what I consider to be the accusations in this case.

First, there is the memorial of Spencer, stating that, in 1850, Watrous, while judge of the United States court for the district of Texas, purchased or acquired an interest, *secretly* and under *cover* of *another man's name*, in a certain eleven-league grant of land in Texas, with the understanding and intention of litigating and determining the validity of said eleven-league grant in the Federal court of Texas, of which he was the sole presiding judge.

That is the gist of the first charge. Well, Mr. Speaker, if that were true, I do not hesitate to say that, according to the principles laid down, we ought to vote to have this case sent instantly to the Senate, and the Senate ought instantly to convict him, or as soon as the charge could be proved. I do not hesitate to say that notwithstanding this

is not an indictable offense by the statutes of the United States, it would be by the common law a high crime and misdemeanor; and if he were guilty of it he ought to be impeached on those principles. But how stands the fact? The allegation is that Judge Watrous became interested, secretly and covertly, in a certain title, with the purpose of litigating it in his own court. If there was one particle of evidence, from the beginning to the end of this case, establishing that charge, I have not read it. He with others bought a tract of land; that is true. But I have not seen any evidence that he intended to litigate the title in his own court. In the whole volume of evidence—that seems to have been a drag-net, bringing up everything—there is not a particle of evidence which I have yet seen that he either acquired his interest *secretly*, or intended to litigate the case in his own court. So far as the charge of secrecy is concerned, the testimony shows that quite a number of persons knew of the purchase at the time it was made; Judge Hughes, of Texas, knew it, and Mr. Love, the clerk, testifies that he knew it from common hearsay.

And then as to the intention of adjudicating the validity of his own title in his own court, the testimony shows that even before the writs were filed, when he first saw them in the clerk's office, he spoke of his interest. Here is the testimony:

"Mr. Love, sworn, says: He [Judge Watrous] came into my office at the time the writs were being issued, I think, and said in substance, 'this is one of my cases; I am interested in this case. You will lose your fees, because they will have to go elsewhere to be tried.'"

The same fact he disclosed and spoke of openly in court at the April term, to which they were returned in 1851. There is not a particle of evidence going to show that he ever concealed the fact from mortal man. The allegation is attempted to be sustained only by persons who never heard of it; and who cares for the testimony of a hundred thousand witnesses of that character? Not only the clerk, but the record shows that this his interest was announced in court, and he refused to act or pass orders in those cases involving the validity of his title. There is not, then, one particle of evidence to show that there ever was an intention that his interest should be concealed.

But, Mr. Speaker, it was argued yesterday that the conduct of Judge Watrous was fraudulent and corrupt because he made the purchase with a view corruptly to transfer the case from Texas to New Orleans. The evidence conclusively and completely refutes the first charge of intending to try it himself, and the argument now is, that he corruptly bought the land in order that the case might be transferred to another State. The original accusation against him failed, and now he is pursued with a distinct disavowal of the original ground of accusation with another wholly inconsistent with the first.

Well, sir, League, according to his evidence, was a non-resident of Texas, and the gentleman from Ohio [Mr. BINGHAM] said yesterday that he was a partner with Watrous, and that the title was given to Lapsley, in order to get the case into the Federal court Now, Mr. League, himself, was a non-resident, and had a right to bring the case in the Federal court. Is not that straining the evidence a long way, in order to cast an imputation upon Judge Watrous, where there is not a particle of evidence?

Mr. BILLINGHURST. Allow me to say that the Supreme Court of the United States has decided that he was not *bona fide* a non-resident and dismissed the case which he brought upon that ground after Judge Watrous had decided in such a way that he was held to be a non-resident of Texas.

Mr. STEPHENS, of Georgia. When was that? At what date?

Mr. BILLINGHURST. It was in the case of League *vs.* Jones *et al.*, which is reported in 18 Howard.

Mr. STEPHENS, of Georgia. They decided that League was not a non-resident?

Mr. BILLINGHURST. Yes, sir; the court decided that he had removed to Maryland for the purposes of litigation, and hence turned him out of court.

Mr. STEPHENS, of Georgia. When was that decision made?

Mr. BILLINGHURST. In the December term, 1855.

Mr. STEPHENS, of Georgia. That does not at all interfere with my argument. The Supreme Court may have decided that he was not a *bona fide* non-resident; but if he sued as such in the Federal court, that showed that he thought he was, and would not have got Lapsley joined in the purchase for the purpose of suing in that court. The decision that he was not, made long after this transaction, could not have influenced his motive at the time of the trade.

I come now, sir, to the second allegation. The first charge has been substantially abandoned, and the second is, that several suits were brought in the Federal court of Texas, of which said Watrous was sole judge, in the year 1851, to test the validity of said grant; that they continued pending there until 1854. In the mean time various orders were entered in said causes, said Watrous acting as though no such interest on his part existed; that during this period of nearly four years, he fraudulently and corruptly concealed his interest in the subject-matter of litigation before him; that his interest was finally detected and became publicly known; then the cases were transferred to the Louisiana circuit.

Well, sir, if this charge be true; if, as stated, he did act in his own case; I say according to the principles laid down, put the brand of infamy eternally upon him. But, sir, when I take up this book of testimony, I see that when the writs were filed, Judge Watrous announced his interest, and published it to the bar, and that from the beginning to the end, he never passed a single order on the merits of the case. Here is the testimony:

Mr. Love, the clerk, swears:

"*Question.* Do you recollect the occasion when you first heard the subject mentioned in court?

"*Answer.* When the cases were called in court, Judge Watrous said distinctly, (I have the minutes and memoranda of the court, and I know it was then,) 'I am interested in these suits.' Somebody wanted an order in these cases; says he, 'I will give you no order in these cases, for I would not touch them with a forty-foot pole.'"

Again, the minutes show this order:

"John W. Lapsley *vs.* Charles Duncan.

"This day came the parties by their attorney, and thereupon the judge presiding having stated that he could not

sit in this cause by reason of a personal interest, and of an interest of persons with whom he is connected by blood, in a part of the subject matter in contest, the said parties by their attorneys agree that this cause be removed and transferred for trial to the district of Austin."

Now, sir, in the face of this record, it is asserted that he acted in his own case, and kept his interest secret for four years, until he was detected—that is, from 1850 to 1854. Why, the accusation is utterly disproved; the testimony is directly to the contrary.

Mr. BILLINGHURST. Did I understand the gentleman from Georgia to say that Judge Watrous's interest was discovered at the first term after these causes were instituted? The causes were instituted in January, 1851, and this entry on the record was not made until January, 1852. Two terms intervened before it was made.

Mr. STEPHENS, of Georgia. This is the way I read it:

"At the United States district court for the State of Texas, held in the city of Galveston, on the 21st May, 1851," &c.

Mr. BILLINGHURST. The gentleman will find that the entry he has just read relates to "continuances." If he will read from the record before him a few lines further on, he will find that the judge did not make the disclosure of his interest until January 4, 1852.

Mr. STEPHENS, of Georgia. That does not affect the merits of the case at all. When his interest was disclosed or announced, the case was, and it ought to have been, continued. The great fact is, that his interest was not concealed, and that he made no order touching its merits. This the record shows, while there is not a single witness who testifies that Judge Watrous ever designed at any term, or ever did, in fact, conceal his interest for a single moment. The testimony is positive that the announcement was made when the writ was issued, before it was filed even, and that he never made a single order in the case, except to continue by agreement of attorneys until the transfer was made.

Mr. REAGAN. I desire to ask the gentleman from Georgia if he is apprised of the fact that Spencer states that he never knew of Judge Watrous's interest, until the order for the transfer was made.

Mr. STEPHENS, of Georgia. I know nothing of Spencer's statement, further than appears upon the record; nor would his statement, under the circumstances, have much influence with me. For any man who comes before the House of Representatives of the United States, and charges a high judicial officer with having concealed his interest in a case for four years, during which time he took orders in his own case, and was then detected, when there is not one solitary fact to prove the allegation, but the contrary appearing, as in this case, I say that a man who thus deliberately make such a groundless charge, for the purpose of blackening the character of another man, high or low, I would not believe under oath in anything. But whether his statement be true or not, whether he knew of the interest of the judge or not, is not the question.

Mr. CRAIGE, of North Carolina. Pascal swears that he knew of the interest long before the time when Spencer says it was detected in 1854.

Mr. REAGAN. He knew it; but he said he received his information in a way in which he did not feel authorized to make it known to any one.

Mr. CRAIGE, of North Carolina. Pascal was an enemy of Judge Watrous, and had no object in concealing it.

Mr. STEPHENS, of Georgia. That is immaterial. Why, sir, Alexander came here in 1852, and tried to get Judge Watrous impeached, not for the matters now alleged; and this same interest of Judge Watrous was then disclosed or spoken of before a committee of this House.

Mr. REAGAN. I ask the gentleman from Georgia to point to a word or syllable in this record which discloses the interest of Judge Watrous.

Mr. STEPHENS, of Georgia. The order which I have just read, shows it.

Mr. REAGAN. That order was made two years after the case was filed. It was made in 1852.

Mr. STEPHENS, of Georgia. The order was made in January, 1852, the suits were brought in January, 1851, returnable to April term 1851. His interest was then disclosed as proved, and the cases continued by consent of parties. If Judge Watrous ever passed any order in any one of these cases touching the merits of the cause, I defy any gentleman to point it out. I have looked for it in the testimony in vain. Yet Spencer says he took orders in his own case for four years, until his interest was detected.

I now, sir, pass to the third charge. It is, that after the transfer of said cases to the Louisiana circuit, and on the trial of the issue involving the validity of the title in which said Watrous was so corruptly interested, under said grant, the plaintiffs, Watrous's associates and confederates, amongst other documents, introduced what purported to be a certain power of attorney from one La Vega and others, to one Williams, dated the 5th May, 1832, which said instrument, or pretended power of attorney, was a forgery, and known as such to the parties offering the same, and all of which was done with the previous knowledge, advice, and assent of said Watrous, judge as aforesaid.

This allegation is, that when his interest was detected; when, as judge, he could not try and pass upon his own case, it was transferred to New Orleans. He followed there; and as one of the links in the chain of his title, he caused his confederates to offer an instrument which was forged, and which he knew to be forged.

I say again, if that be true, condemn him, according to the rule laid down. If that be true, if it is supported by a single particle of evidence even of probable cause, I will say, let his impeachment be voted. But so far from it, there is not a particle of evidence even that he ever saw this Le Vega power of attorney in his life. It was never read to him, and he never saw it. It was one of the links in the chain of title; but whether it was forged or not, there is no evidence to show that Judge Watrous knew it. I call upon the gentleman to show the evidence that Judge Watrous knew it to be a forgery.

Mr. REAGAN. I call the attention of the gentleman to the record made by Judge Watrous himself upon the trial, of Ufford *vs.* Dykes, upon a judgment by default, and upon writ of equity awarded, where there was no resistance by the defendant. Judge Watrous charged the jury, on

that trial, that the title was good and conveyed the land. And these were the identical title papers under which Watrous claimed his interest in the La Vega grant, the same concession, same power to locate, and the same power of sale.

Mr. STEPHENS, of Georgia. Did he say he knew it was forged? If he said the title was good, does that show that he knew it was forged?

Mr. REAGAN. That is not the point.

Mr. STEPHENS, of Georgia. It is precisely the point. How can you sustain a charge against Judge Watrous on the ground of this forged instrument unless he knew it was forged?

Mr. MILLSON. The gentleman has made a concession which I do not think he intended to have made.

Mr. STEPHENS, of Georgia. Perhaps the gentleman will not think so when he hears me through.

Mr. REAGAN. I have seen the gentleman's adroitness before in avoiding the point at issue; and now he essays to display it at my expense; and I wish to show how he does it. He asserted that the judge never saw the power of attorney; but he has passed over the allegation that the judge never saw the power of attorney, and contented himself with saying that he did not know it was a forgery. My point is, that Judge Watrous could not have adjudicated the default case before him without looking, at the time of the suit, at the power of sale, and he was bound to look at it.

Mr. STEPHENS, of Georgia. What I said to the gentleman was, that there was no evidence, no witnesses, to show that Judge Watrous ever saw it even, much less that he knew it was forged.

Mr. REAGAN. There is the record.

Mr. STEPHENS, of Georgia. The record does not show that he ever saw the power of attorney. The gentleman draws an inference. In the case of Ufford *vs.* Dykes, this question was in issue; but the attorney says the power of attorney was not read; that the plaintiffs would not go to trial because he did not have it; that he permitted them to use his copy, but that no question was raised upon it, and that it was not read in court; and that when the defendants acknowledged its validity, then only the judge said that the title as admitted was good. But there is no evidence in the world that the judge ever saw it, or examined it, or knew anything about its genuineness. The gentleman argues inferentially that he did see it, but the testimony is that he did not see it; but if he had seen it, that would not prove that he knew it was forged.

Mr. REAGAN. The gentleman has shifted his ground again. I said he must have seen the title papers, when he charged the jury that the title was good, and conveyed the land at the time the default judgment was taken; but he has gone off, and answers me by stating what occurred on a subsequent trial of the same case, this default judgment having previously been set aside, and a new trial granted. And if, in the charge I speak of, there was no power of sale, then the judge gave a false charge, and ought to be impeached for that.

Mr. STEPHENS, of Georgia. Then let him be impeached for that; but I am dealing with the charges as they are preferred.

In reference to the case of Ufford *vs.* Dykes, I will say that the plaintiff claimed lands, and that this De la Vega power of attorney was a link in the chain of evidence; and it is said that Judge Watrous corruptly acted as judge in that case, because, in its trial, that link in the chain of title of the plaintiff was permitted to go before him, and he passed corruptly upon it. Now, suppose a judge, residing in this District, should buy a piece of land under the grant of Mr. Carroll, who held this whole tract of country, and a suit should be brought in reference thereto: the title to that piece of land would have to be traced in the court from the King's grant down through Carroll. I suppose it would be held by the gentleman from Texas and others that a judge of this District, who might hold his own title from the same source, could not sit on the trial of the case. It is monstrous.

Mr. MILLSON. I desire to suggest to the gentleman from Georgia that the power of attorney from La Vega was not a link in the chain of evidence in the case of Ufford *vs.* Dykes.

Mr. REAGAN. It was an essential link.

Mr. MILLSON. There were three eleven-league grants of land to the two Aguirres and La Vega, severally; and, although the two Aguirres and La Vega united in a power of attorney which was written upon the same paper, yet they were, in legal contemplation, separate and distinct powers. In the Ufford *vs.* Dykes case, the plaintiff claimed under Aguirre; and even though the judge might have known that the signature of La Vega was forged, it did not affect the power from Aguirre.

Mr. STEPHENS, of Georgia. If that were so—if the La Vega power of attorney was a link in the chain of Ufford's title—it is not corrupt necessarily, because the judgment in the case could not possibly ever have affected the judge's interest. I see no corruption in that; none in the world. But the truth is, that the judge did not see the power of attorney; it was not read; and there is not the slightest shadow of proof that he ever knew that it was the same paper. Not a single witness swears that Judge Watrous ever saw it, or knew that it was a forgery. The gist of the charge is, that a forged instrument was used in court; that the judge knew it, and sent it there. If so, according to the principles laid down he ought to be impeached; but there is not a particle of proof, not a shade of a shadow, or a semblance of proof, to sustain any such charge, if it is true.

But, as I understand the fact, there was an issue of *non est factum* made upon that power of attorney in the Louisiana court; and, upon the trial, the jury found it was not a forgery.

Mr. REAGAN. They did upon the testimony of Hewitson, who swore that Gonzales was dead; and Gonzales came forward and testified as a witness in the case two years afterwards.

Mr. STEPHENS, of Georgia. I am not going to bring up all the records to show how it was done; but there was a judge of the Supreme Court of the United States presiding, all the witnesses were there upon both sides, and the result of the verdict of twelve men was, that the paper was not a forgery. Now, I take it for granted that they were as competent to judge of that fact as this House is. Are you to say that that instrument is a forgery? Why, before you could impeach Judge Watrous upon this indictment, you are bound

upon your oaths to say it was a forgery—which that jury could not do with all the evidence before them. You have got to say not only that it *was* a forgery, but that Judge Watrous *knew it*.

But, in addition to that, is the statement of the gentleman from Texas [Mr. BRYAN] the other day, from the private papers of Stephen F. Austin, executed in 1833, I believe, in which he alludes to this identical paper, and says it conveyed the power of sale. To my mind that is conclusive, if there was any other evidence wanting, that that power of attorney is good and valid.

Mr. REAGAN. My colleague never said what the gentleman supposes he did; and there are no such papers in the case.

Mr. BRYAN. My colleague says there were no papers in the case. My declaration upon this floor, the extracts I read, and the assertion that I would present to him and to any other persons the originals, should be sufficient to him and any other persons.

Mr. REAGAN. I spoke of the title papers, and in no one of them is that fact given.

Mr. BRYAN. The fact is given, and that is sufficient, without any title papers. I agree most thoroughly with the gentleman from Georgia.

Mr. STEPHENS, of Georgia. I must go on. I have stated the most prominent parts of this case. There is one rule which governs me, and I think it is a wise and good one. When any person makes an accusation against another's fair fame and reputation, and deliberately publishes what turns out to be a most gross and outrageous, if not malicious, charge against him, and I find that he has committed a great wrong against his fellow-man by accusing him falsely, I watch very closely the smaller matters of his accusation; and when those great matters are proven to be untrue, I apply another maxim of law to the smaller ones—*de minimis non curat lex*.

As to the rulings or errors in the Mussina case, in which it is not pretended that Judge Watrous had the remotest personal interest, I have read them all carefully; and this is what I have got to say to that: that if these were errors, Mr. Mussina could have appealed. In my judgment, he comes now falsely, and says he did not appeal because Judge Watrous would not let him.

Mr. REAGAN. If the gentleman will allow me, I will show him that it was impossible for him to appeal?

Mr. STEPHENS, of Georgia. I will.

Mr. REAGAN. Well; let me tell the gentleman that by the action of this judge, a married woman and a minor child, resident in Mexico, were made parties defendants—the one without a husband and the other without a guardian in the jurisdiction or under the power of the court; and Mussina never could have had the necessary papers served on them to bring up the appeal as to them, and without them no appeal would lie. The matter was so ingeniously arranged by the judge that there was no possibility of appeal.

Mr. STEPHENS, of Georgia. Did Mussina make that point before the judge?

Mr. REAGAN. He could not. When could the point have been made?

Mr. STEPHENS, of Georgia. When the error was committed, why did he not except then and take it up to the supreme court? Why could he not? and why did he not? He did not; and it is a pretext for him to do so now. I do not think there was any error in these rulings. In my judgment, every ruling of the judge that is complained of was right. That is my opinion as a lawyer. But if there was any error in them, our judicial system provides for the means of correcting errors of judgment; but not by impeachment.

Mr. REAGAN. I wish now to have the gentleman from Georgia answer this question: Was it right in the judge to admit a party to the suit to swear as a general witness, in his own case, against the objection of the adverse party?

Mr. STEPHENS, of Georgia. As to all such questions as serving notices and interrogatories, it is uniformly allowed by the courts.

Mr. REAGAN. But I ask whether a party should be admitted as a *general witness*? Let the gentleman go the whole length of the record.

Mr. STEPHENS, of Georgia. State the point in the record.

Mr. REAGAN. I ask you if it was right in the judge——

Mr. STEPHENS, of Georgia. Just wait. If there was error in that, why not have excepted to it, and have it taken to the Supreme Court?

Mr. REAGAN. I have answered, that Mussina could not do it.

Mr. STEPHENS, of Georgia. Why?

Mr. REAGAN. For the reason that the necessary process could not be served on the married woman and minor child, who resided in Mexico, and whom Judge Watrous improperly and unlawfully took jurisdiction of.

Mr. STEPHENS, of Georgia. Why did he not except to that?

Mr. REAGAN. He did except.

Mr. STEPHENS, of Georgia. Why not bring it to the Supreme Court?

Mr. REAGAN. I stated in my argument the other day, an additional reason that Mussina believed that the appeal taken by Shannon would have settled his own case.

Mr. STEPHENS, of Georgia. Does Mussina show that he ever thought that Shannon's case carried up his?

Mr. REAGAN. He employed Mr. Benjamin as his counsel in that appeal, and did not know that Shannon's case did not carry his until Mr. Benjamin told him that it did not.

Mr. STEPHENS, of Georgia. He went to see Mr. Benjamin, to get him to defend his case, after nearly five years had elapsed, and Mr. Benjamin swears that he did not understand what case Mussina was talking about; so little did he know about it, that he could not describe it correctly. But he had ample time to appeal after Mr. Benjamin told him of the defect; and Judge Watrous notified his lawyer after Mr. Benjamin's opinion was given, that he was ready to certify the appeal when he complied with the terms of the law. But he did not do it.

Mr. REAGAN. In justice to Mr. Mussina let me say that Mr. Benjamin did not state that that was the fault of Mussina, but a mistaken inference on his part. He supposed that Mussina referred to another case in which his name was mentioned.

Mr. STEPHENS, of Georgia. Well, let those things go for what they are worth.

Now, Mr. Speaker, to return. As to all these rulings, as my attention has been directed to them

out of the line of my argument, and by which so much time, unexpected, has been consumed, I repeat, in my judgment, they were correct; witnesses were allowed where their interest was mutually balanced; and in one instance complained of, the preponderance of interest was against the party calling the witness. In my judgment every one of them was correct. But a sufficient answer for me is that if there was an error of judgment, an appeal might have been taken, and if the party lost his appeal by *laches*, he cannot now get redress by impeachment.

Mr. REAGAN. If the gentleman will allow me time, I will show how often he tried to get an appeal.

Mr. STEPHENS, of Georgia. Not now. I have talked with some gentlemen on this matter, who told me that they think it was wrong in Judge Watrous to have gone to Alabama and join with citizens of that State to buy these lands. All that I have got to say on that is, that it was no offense; and I say further, that if Judge Watrous was the man that they pretend to think he is, and charge him to be, Spencer, instead of complaining of what he did, ought to thank him for it, for if he had not been interested, Lapsey could have sued in his court and got a trial before him—this most corrupt judge as they charge him to be. But as he became interested, the case complained of was transferred and tried before Judge Campbell; against him there is no charge or imputation. By the arrangement he got an able, competent, and acknowledged honest man to try his cause. If he lost it as he did, he has no reason to complain of Judge Watrous. No one pretends that justice has been defeated or anybody been wronged. If Spencer has lost his case, it was because the law was against him. The burden of his complaint now is, that, by the conduct of Judge Watrous, his cause was tried before an honest judge and impartial jury.

One word about the action of the Legislature of Texas. This was in 1848, not about any of these transactions; the reason why the Legislature requested him to resign, as I understand it, was because he held that certain statutes of limitation did not run until the parties got within the jurisdiction of the State of Texas.

Mr. REAGAN. That was not the cause of the action of the Legislature. The reason they requested Judge Watrous to resign was because he was believed to be engaged in dealing in fraudulent land certificates and fraudulent eleven-league grants.

Mr. STEPHENS, of Georgia. Well, at all events, Mr. Speaker, they could not have alluded to this transaction, because the resolution was adopted in 1848, and this purchase was not made till 1850. I do not think that spiritual rappings had been known so early as 1848, or that there was any *media* at that day, which could tell in 1848 what would be done in 1850, and from that on to 1854.

Mr. REAGAN. But, fraudulent certificates and fraudulent eleven-league grants were known then, if spiritualism was not.

Mr. STEPHENS, of Georgia. Then all I have got to say is, that the Legislature was worse than Mussina, for they allowed ten years to pass and have not yet brought witnesses to prove this fact.

Mr. REAGAN. Will the gentleman stop there?

Mr. STEPHENS, of Georgia. Yes, right there. [Laughter.]

Mr. REAGAN. I offered to prove that before the Judiciary Committee during the last session. I went before them with a record of the circuit court of Louisiana for that purpose, and asked to have witnesses examined, as I have said before; but I was denied the privilege by the action of this House and the committee.

I also offered to prove that he had sold three fraudulent league certificates to Mr. Low, of Illinois, and swindled him out of about six thousand dollars, when he knew them to be fraudulent, void, and worthless; for which, by the laws of Texas, he subjected himself to a most ignominious punishment; but was denied the opportunity of doing this, too.

Mr. STEPHENS, of Georgia. Then it would have been much better to have proved it in Texas, and have had him whipped.

[Here the hammer fell.]

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